

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PUBLIC HEARING
amendment and transfer, the)	ON PROPOSED AMENDMENT
proposed adoption of New Rules)	AND TRANSFER, ADOPTION
I through IV, and the proposed)	AND REPEAL
repeal of existing rules, all)	
pertaining to outfitter licensing)	
and operations)	

TO: All Concerned Persons

1. On September 20, 2005, at 9:00 a.m., a public hearing will be held in room 489 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and transfer, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or who need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Outfitters no later than 5:00 p.m., September 14, 2005, to advise us of the nature of the accommodation you need. Please contact Wayne Johnston, Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2370; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsout@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: As part of the periodic review of its rules, and in conjunction with and in response to the 2001 legislation transferring the Board of Outfitters (Board) from the Department of Commerce to the Department of Labor and Industry (Department), the Board is proposing a substantial number of revisions to its administrative rules. Some of the proposed amendments are technical in nature, such as the proposed renumbering of the rules to designate where in ARM Title 24 (rules of the Department of Labor and Industry) the rule is to be placed when it is transferred from ARM Title 8 (Commerce) to ARM Title 24. Similar technical changes substitute modern language for archaic phrasing, amend rule catchphrases for accuracy and update obsolete or inappropriate statutory references. Other rule changes reflect a decision by the Board to attempt to streamline its rules. Repeal of existing rules will also make the transfer of the remaining rules to ARM Title 24 simpler and more efficient. Accordingly, the Board believes that there is reasonable necessity to generally amend certain existing rules, repeal certain existing rules, and adopt new rules at this time. Where additional specific

bases for a proposed action exist, the Board will identify those reasons immediately following that rule.

4. The rules proposed to be amended and transferred provide as follows, deleted matter interlined, new matter underlined:

~~8.39.518 24.171.401 LICENSURE FEES FOR OUTFITTER, OPERATIONS PLAN, NET CLIENT HUNTING USE (N.C.H.U.), AND GUIDE OR PROFESSIONAL GUIDE~~ (1) through (1)(e) remain the same.

(f) Annual fee for each additional hunting 5,000
camp, or area where services of a licensed
outfitter are provided, added after January 1, 1999

and located beyond a 100-mile radius of the
outfitter's base of operations and that is
in an a Montana department of fish, wildlife, and
parks administrative region other than the region
containing the outfitter's base of operations

(g) Amendments to operations plan 2,000
proposing an increase in net client ~~hunting~~ hunter use (NCHU)

(h) Fee for each new client added to
operations plan by ~~N.C.H.U.~~ NCHU expansion request 500

(i) through (j) remain the same.

(k) Fee for transfer of NCHU from each 50
outfitter involved in the transfer

(l) Fee for replacement watercraft 5
identification

(m) Fee for audit of river use days 50

AUTH: 37-1-131, 37-1-134, 37-47-201, ~~37-47-303, 37-47-304,~~
37-47-306, MCA

IMP: 37-1-134, 37-47-304, 37-47-306, 37-47-307, 37-47-308,
~~37-47-310, 37-47-316, 37-47-317, 37-47-318,~~ MCA

REASON: The Board has determined that it is reasonable and necessary to amend subsection (1)(f) of this rule in order to further implement 37-47-318, MCA. Amendment of this subsection will clarify that the annual fee will be assessed whenever an outfitter establishes a new area where services are being offered rather than simply where an outfitter provides an individual camp. This subsection is also being amended to clarify that the administrative region referenced means a region of the Montana Department of Fish, Wildlife, and Parks, as provided in the statute.

The Board has determined that it is reasonable and necessary to add subsection (1)(k) of this rule to assess a fee for transfer of NCHU. This fee was determined based on an average of four hours of personal services per transfer, at a rate of \$23.84 per hour (\$23.84 x 4 hours = \$95.36/2 outfitters = \$47.68 rounded to \$50.00). The Board has a responsibility to set fees commensurate with associated costs, therefore it is within reason that only the outfitters that wish to transfer NCHU be responsible to pay the associated cost. This proposed

new fee will affect approximately 50 outfitters per year that wish to transfer NCHU, for an approximate annual revenue increase of \$2,500.00.

The Board has determined that it is reasonable and necessary to add subsection (1)(l) of this rule to implement a fee to cover the costs of issuing replacement or additional sets of watercraft identification. The cost of each watercraft identification is \$0.69. The cost of supplies to mark and mail each identification is \$0.72. The approximate personal services spent preparing and mailing each identification is \$1.98. The total cost of processing additional watercraft identification is \$3.39 apiece ($\$0.69 + 0.72 + 1.98 = \3.39 , rounded up to \$5.00). This fee will only affect those outfitters, guides, and professional guides that request additional sets of watercraft identification. Using figures from 2004, the Board estimates that approximately 400 additional sets of watercraft identification will be processed, for an estimated annual revenue increase of \$2,000.00.

The Board has determined that it is reasonable and necessary to add subsection (1)(m) of this rule to require a fee for transfer of river use days when an audit is requested. This fee was determined based on an average of two hours of personal services per audit, at a rate of \$23.84 per hour (2 hours x \$23.84 = \$47.68 rounded to \$50.00). The Board has a responsibility to set fees commensurate with costs, therefore it is within reason that the outfitters requesting an audit of their river use days be responsible to pay the associated costs. This fee will affect approximately five outfitters per year, with an approximate annual revenue increase of \$250.00.

Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and to provide the complete sources of the Board's rulemaking authority.

~~8.39.501~~ 24.171.501 ~~LICENSURE APPLICATION FOR OUTFITTER LICENSES~~ LICENSE (1) remains the same but is renumbered (2).

(a) remains the same.

(b) successfully passed the required examination examinations pertaining to those functions, and, categories described in ARM 24.171.505;

(c) filed an operations plan that has been approved by the board;

(d) filed a completed outfitter license application with the board office;

(e) received an approved equipment inspection; and

(f) if applicable, filed a NCHU application that has been approved by the board.

(2) remains the same but is renumbered (1).

(a) remains the same.

(b) hunting services (upland game birds, waterfowl, and non-big game) ~~and turkey;~~

(c) fishing services; ~~or~~ and

(d) if applicable to the services provided in ~~(2)~~ (1) (a) through (c) ~~above~~, and qualified for, one or more of the following:

(i) saddle or pack animal, ~~;~~ or

~~(ii) personal guiding services,~~

~~(iii) camping equipment,~~

~~(iv) transportation (vehicles or other conveyance),~~

~~(v)~~ (ii) boat or other floating craft, or motorized watercraft.

~~(vi) lodging.~~

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-47-101, 37-47-201, 37-47-301, 37-47-302, 37-47-305,
37-47-307, 37-47-308, MCA

REASON: The Board has determined that it is reasonable and necessary to amend this rule to clarify the necessary application steps for outfitter licensure in response to questions from applicants. An applicant must file a completed license application, have a complete operations plan on file with the Board office, pass the required examinations, receive an approved equipment inspection and file a NCHU application, previously approved by the Board. Applicants had expressed confusion regarding submission of the operations plan and whether the NCHU application is required prior to licensure.

The Board has determined that because personal guiding services, camping equipment, and transportation are general areas of practice for all outfitters and because an individual examination is not administered for provision of these services, these functions do not need to be printed on the outfitter's license. The Board is amending the rule accordingly. It is reasonable to amend the rule to clarify to the reader that the term "turkey" is considered an upland game bird as defined by the Montana Department of Fish, Wildlife and Parks at 87-2-101(15), MCA. Additionally, the Board is amending the rule to account for outfitter businesses using both drift and motorized boats. The implementation cites are being amended to accurately reflect all statutes implemented through the rule.

~~8-39-502~~ 24.171.502 ~~LICENSURE—OUTFITTER QUALIFICATIONS~~

~~(1) In addition to meeting all of the qualifications contained in 37-47-302, MCA, outfitter qualifications, each An applicant for an outfitter license shall have:~~

~~(a) have 100 days of verified experience as a licensed outfitter in another state or a licensed guide or professional guide working for a licensed outfitter in this state, guiding clients in pursuing the types of game and using methods for which licensure is sought by the applicant~~ (hunting or fishing); and, or

~~(b) be qualified to provide all services and use all equipment necessary to provide the functions of an outfitter that his or her license will authorize him or her to conduct. 100 days of verified experience as a licensed outfitter in another state guiding clients in pursuing the types of game and using the methods for which licensure is sought by the applicant (hunting or fishing), subject to approval by the board; and~~

~~(c) the qualifications to provide all services and use all equipment necessary to provide the functions of an outfitter that the license will authorize the outfitter to provide.~~

(2) For purposes of this rule, verified experience includes:

(a) an affidavit by the outfitter verifying attesting to the guiding experience claimed by the applicant and subject to confirmation by the outfitter client logs;

(b) and (c) remain the same.

(d) sources of information with board acceptable guarantees of reliability which may include, but are not limited to, ~~park service records~~ federal land agency records, client affidavits or letters.

~~(3) The experience required in this part shall be in the field pertaining to the license function applied for.~~

(4) remains the same but is renumbered (3).

(4) The board may waive up to 50 days of experience for an applicant purchasing an existing outfitter operation provided that:

(a) the applicant receives pre-approval from the board for a training and instruction plan documenting how and in what capacity the applicant will work with the licensed outfitter from whom the business is obtained;

(b) the applicant has entered into a sales agreement with the selling outfitter for the purchase of the operation and the sales agreement provides supervision of the applicant by the selling outfitter during the 12-month period following board approval of the application;

(c) the selling outfitter has a current, approved operations plan on file with the board; and

(d) the applicant files an operations plan that is approved by the board.

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-47-201, 37-47-302, 37-47-304, 37-47-307, 37-47-308, MCA

REASON: The threshold qualifications for licensure as an outfitter are set forth at 37-47-302, MCA. In reviewing the administrative rules, the Board determined it is reasonably necessary to amend this rule to strike redundant and unnecessary introductory language.

The Board has determined that it is reasonable and necessary to amend and reorganize this rule to provide a clearer

explanation that the required prior guiding or outfitting experience must be in the general fields of hunting or fishing. The amendment further clarifies and informs applicants that the Board may confirm applicants' experience by reviewing outfitter client logs.

It is reasonable and necessary to replace "park service records" with "federal land agency records", as there are several federal agencies that require reporting of client use. The Board is amending the rule to use a broader term so as not to limit the types of federal agency records that may be submitted to verify experience.

It is reasonably necessary to amend this rule to incorporate the requirements for requesting waiver of up to 50 days of experience as previously included in ARM 8.39.513 which is proposed to be repealed. The Board has amended the requirements to clarify that an applicant for a waiver must file and receive board approval of an operations plan. The operations plan is currently and has been previously required as part of the waiver application process, but the requirement was never before delineated in rule.

~~8.39.503~~ 24.171.505 ~~LICENSURE—OUTFITTER EXAMINATION~~

(1) and (2) remain the same.

(3) The following list is not intended to be exhaustive in detail. A wide range of issues and subtopics exist within each broad topic. The ~~general~~ examination categories ~~will be~~ are:

(a) ~~hunting,~~ general knowledge of outfitting and guiding;

(b) ~~bird hunting,~~ hunting;

(c) fishing; and

(d) ~~watercraft used for fishing or hunting,~~ packing.

~~(e) packing; and~~

~~(f) waterfowl. This list is not intended to be exhaustive in detail. A wide range of issues and subtopics exist within each broad topic.~~

(4) remains the same but is renumbered (6).

(4) All applicants must obtain a passing score of 75% or more on each examination category taken.

(5) remains the same.

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-47-201, 37-47-305, MCA

REASON: As part of the periodic review of its administrative rules, the Board determined that it is reasonable and necessary to amend the rule regarding outfitter licensure examination. The Board determined that some of the current test categories are broad and general enough to be required of all outfitter licensure applicants. The Board is broadening the description of the general test categories to encompass all the areas tested. It is reasonably necessary to set forth

the minimum passing score to provide notice to and lessen confusion among license applicants. The 75% minimum passing score is currently and has been previously in effect as a Board policy, but the requirement was never before specifically delineated in rule.

~~8.39.505~~ 24.171.506 ~~LICENSURE~~—OUTFITTER APPLICATION

(1) remains the same.

(2) Application shall ~~be in two~~ consist of three parts:

(a) a license application form which shall require information the board needs in order to determine the basic abilities and qualifications of the applicant and to verify those functions of an outfitter the applicant is applying for; ~~and~~

(b) an operations plan application form which shall be considered under the guidelines of 37-47-304(2), MCA, and ARM ~~8.39.804. 24.171.701~~; and

(c) a NCHU application which shall be considered under the guidelines of 37-47-316, 37-47-317 and 37-47-318, MCA, if operating on land or property other than federal land that regulates hunter use.

(3) An applicant who receives approval of ~~his or her~~ a proposed operations plan and license application ~~may then~~ must take, and ~~must~~ pass, the licensing examination prior to licensure.

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-47-201, 37-47-304, 37-47-307, MCA

REASON: In reviewing the administrative rules, the Board determined it is reasonably necessary to amend this rule to clarify the full application requirements for outfitter licensure. The amendment specifies that a NCHU application must accompany an application for a hunting outfitter license. The requirement of submission of a NCHU application is currently and has been required as part of the outfitter application, but the requirement was never before delineated in rule.

~~8.39.506~~ 24.171.507 INSURANCE FOR OUTFITTERS (1) An outfitter, other than an outfitter licensed on inactive status, shall have liability insurance, as a named insured, in effect at all times during the license year, and shall submit proof of such insurance with ~~his or her~~ an application for renewal. Minimum amounts of liability insurance shall be \$10,000 for property damage, \$100,000 for personal injury to one person and a total of \$300,000 for personal injury to more than one person.

AUTH: 37-47-201, MCA

IMP: 37-47-201, 37-47-304, MCA

REASON: It is reasonable and necessary to address confusion and inquiries among licensees by amending this rule to clarify

what is intended by the Board as satisfaction of the liability insurance requirement for outfitters. The amendment specifies that the liability insurance policy must show the licensed outfitter as a named insured since outfitter licenses are issued only to individual outfitters and not to businesses. The implementation cites are being amended to accurately reflect all statutes implemented through the rule.

8.39.507 24.171.510 OUTFITTER ACTING AS GUIDE

(1) ~~Any person~~ A licensee holding a current and valid outfitter's license may act as a guide without a guide's license if such licensee:

(a) ~~he or she~~ possesses the qualifications of a guide under these rules;

(b) ~~they work~~ works for only one outfitter at any given time; ~~and~~

(c) ~~they act~~ acts as a guide only within the services and area of operation of this particular outfitter- ;

(d) is reported as a guide in that employer outfitter's client logs; and

(e) submits written notification of the guide work to the board.

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-47-301, 37-47-302, 37-47-303, MCA

REASON: The Board has determined it is reasonably necessary to amend this rule to add the requirement that a licensed outfitter who is working for another licensed outfitter as a guide is reported as such in the employer outfitter's client logs. This reporting requirement is currently and has been required by the Board when an outfitter is acting as a guide, but was never before specifically delineated in rule. The Board is also adding the requirement that the guiding outfitter provide written notice to the Board of the guide work. Board enforcement staff will benefit greatly by having this additional information when encountering an outfitter having clients outside of the outfitter's area of operations and claiming to be working as a guide for another employer outfitter. Authority cites are being amended to provide the complete sources of the Board's rulemaking authority.

8.39.510 24.171.511 ~~LICENSURE~~—AMENDMENT TO OPERATIONS PLAN

(1) An outfitter may apply for an amendment to ~~his or her the outfitter's~~ operations plan by stating in writing ~~his or her the~~ proposed changes and submitting it to the board.

(2) All amendments will be considered by the board using the same criteria as new applicants, including being required to take those parts of the outfitter examination that apply to the proposed amendment, if an outfitter is applying to add ~~hunting, fishing, watercraft used for fishing or hunting, upland game bird, waterfowl, turkey or horse use~~ the following to ~~his or her the~~ operations plan, ~~being required to take~~

~~those parts of the outfitter examination that apply to the proposed amendment. :~~

- ~~(a) hunting;~~
- ~~(b) fishing;~~
- ~~(c) watercraft used for fishing or hunting;~~
- ~~(d) upland game bird;~~
- ~~(e) waterfowl; or~~
- ~~(f) saddle or pack animal use.~~

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-47-201, MCA

REASON: It is reasonable to amend the rule to delete the duplicate reference to "turkey," as the turkey is already considered an upland game bird as defined by the Montana Department of Fish, Wildlife and Parks at 87-2-101(15), MCA. The rule is being amended to further earmark for clarity and better organization. The Board is deleting the term "horse" and substituting "saddle or pack animal" to address the fact that licensees are using different pack animals than just horses as part of their operations plans.

~~8.39.515 24.171.603 LICENSURE—GUIDE OR PROFESSIONAL GUIDE QUALIFICATIONS~~ (1) ~~In addition to the requirements contained in 37-47-303, MCA, for guide or professional guide's qualifications, an~~ An applicant for a guide or professional guide license shall have:

(a) through (2)(e) remain the same.

(3) An outfitter whose license is currently suspended or revoked ~~shall~~ is not ~~be~~ qualified for a guide or professional guide license.

AUTH: 37-1-131, ~~37-47-101~~, 37-47-201, MCA

IMP: 37-47-101, 37-47-201, 37-47-303, 37-47-307, MCA

REASON: The threshold qualifications for licensure as a guide or professional guide are set forth at 37-47-303, MCA, and the statute already provides for additional requirements to be set by Board rule. In reviewing the administrative rules, the Board determined it is reasonably necessary to amend this rule to strike redundant and unnecessary introductory language.

The Board is amending language in section (3) to more clearly convey the Board's intent in addressing the situation where an outfitter not in good licensure standing applies for guide licensure. The Board has concluded that an outfitter with a license suspended or revoked for disciplinary reasons should not be able to qualify for a guide license as a way of circumventing the suspension or revocation. The authority cites are being amended to delete an erroneous cite and provide the complete and accurate sources of the Board's rulemaking authority.

~~8.39.703~~ 24.171.801 OUTFITTER RECORDS (1) through (2)(c) remain the same.

(d) clients' hunting ~~and~~ or fishing license numbers;

(e) and (f) remain the same.

(g) the actual leased acreage unused by clients during that year; ~~and~~

(h) tally sheets reflecting the number of clients served per ~~N.C.H.U.~~ NCHU category as defined in ARM ~~8.39.804(2)(a), (b), and (c),~~ 24.171.701 each year shall be maintained and submitted to the board during the renewal of the license or when the outfitter's license is lapsed; ~~and~~

(i) the name and license number of the guide who accompanied the client.

(3) remains the same.

(4) Outfitters must provide in writing to the board, on a board-prescribed form, all designated booking agents used by the outfitter prior to providing services.

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-47-301, MCA

REASON: The Board has determined there is reasonable necessity to amend this rule to clarify that outfitter records must contain the names and license numbers of the guides working with an outfitter to enable the Board to better track who is providing services to clients and to verify experience for guides. This is not a new requirement for inclusion in the client logs, but has not been delineated before in rule. It is also necessary to amend this rule to add the requirement for the outfitter to list booking agents that are providing a service to the outfitter. Requiring documentation of booking agents will provide a method of cross-referencing booking agents with outfitters and will enable the Board staff to track guides legitimately working as booking agents for outfitters as opposed to guides who are actually working for themselves. Since the Montana Department of Fish, Wildlife, and Parks switched to an automated licensing system, hunting and fishing license numbers are the same for each individual, and the Board is amending this rule accordingly.

~~8.39.704~~ 24.171.802 SAFETY PROVISIONS (1) remains the same.

(2) Except for the one-time, ~~90~~ 30-day exemption provided for ~~new, first time applicants and temporary emergency~~ guide licenses in ARM ~~8.39.514(2)~~ [NEW RULE II], guides and professional guides are required to hold a current basic first aid card ~~at all times~~ while licensed.

(3) remains the same.

(4) Each watercraft or vessel shall contain a serviceable U.S. coast guard approved personal floatation device for each person on board. Children under 12 are required to wear a personal floatation device. Watercraft 16 feet and longer are required to be equipped with a throwable type IV floatation device.

(5) remains the same.

AUTH: 37-47-201, MCA
IMP: 37-47-201, MCA

REASON: Through the periodic review of its administrative rules, the Board determined that the current 90-day exemption potentially allows an emergency guide to operate for an entire fishing and hunting season without being qualified to administer first aid. The amendment to a 30-day exemption would address this concern and serve to better protect the health and safety of the clients. The Board determined that it is reasonable and necessary to amend this rule to correspond and comply with the throwable flotation device requirement of the Montana Department of Fish, Wildlife, and Parks for watercraft over 16 feet in length.

~~8.39.419~~ 24.171.806 WATERCRAFT IDENTIFICATION (1) A person holding a valid outfitter, professional guide, or guide license who utilizes any type of watercraft while providing services shall prove evidence of licensure by displaying a Montana board of outfitters issued license watercraft identification tag on each watercraft to be occupied by the licensee.

(2) through (5) remain the same.

~~(6) This rule shall be effective commencing with the 1998 licensing year. Licensees, depending on watercraft ownership, shall apply for sufficient tags to identify all watercraft they may utilize to provide services. Tag requests~~ Requests for watercraft identification shall be made as part of the annual license and renewal applications starting with ~~1998 applications~~ application.

~~(7) The following uses of this license~~ Improper use of watercraft identification tag shall be considered misconduct under ARM ~~8.39.709~~ 24.171.2301.

~~(a) failure to display license tags by any licensee while providing services;~~

~~(b) display of counterfeit license tags or license numbers;~~

~~(c) offering for use by an unlicensed individual any license tag identifying another licensee as the occupant of the watercraft.~~

(8) Licensees shall be provided with one set of watercraft identification at the time of application for licensure or renewal. A fee will be assessed for any replacement or additional sets of identification needed, in accordance with ARM 24.171.401.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-1-134, 37-47-201, 37-47-301, 37-47-302, 37-47-303, 37-47-304, MCA

REASON: The Board has determined there is a reasonable necessity to clarify throughout the rule that the tag

referenced is a means to identify watercraft and is not a license. The effective date for the rule is not needed as the rule specifies that watercraft identifications are required at all times while providing services. It is reasonably necessary to assess a fee for replacement sets of identification to cover the additional costs associated with Board's production, printing, processing, and mailing of the additional sets. Additionally, the Board is proposing to move the specific examples of improper watercraft identification use to ARM 24.171.2301 where it properly belongs. This amendment will make it easier for readers to locate and identify what the Board considers to be licensee unprofessional conduct or misconduct. The Board has determined it is reasonably necessary to amend the authority and implementation cites to accurately reflect all statutes implemented through the rule and to provide the complete sources of the Board's rulemaking authority.

~~8-39-508~~ 24.171.2101 ~~LICENSURE—OUTFITTER RENEWAL~~

(1) License renewal applications for outfitters, ~~guides and professional guides~~ shall be made on forms provided by the board and shall be accompanied by:

(a) the required fee ~~(outfitters, guides and professional guides)~~;

(b) ~~a signed statement verifying that the licensee has current first aid training and is able to produce a current first aid card upon request~~ a copy of the licensee's valid and current first aid certification;

(c) a copy of the licensee's current insurance certificate ~~(outfitters only)~~ with the licensee as the named insured;

(d) complete client report logs ~~(outfitters only)~~; and

(e) fishing and/or hunting statistical outfitter use level sheets, depending on the services provided by the outfitter in the preceding license year ~~(outfitter only)~~.

(2) If an outfitter, ~~guide or professional guide~~ does not submit a completed renewal application with the required fee in accordance with (1) on or before December 31 of each license year, ~~he or she~~ the outfitter shall immediately cease practice until a renewal application is submitted and approved by the board.

(3) remains the same.

(4) Outfitters who provide services during the late hunt seasons may submit amended client logs and statistical use level sheets reflecting services from December 1st through December 31st separately as long as they are received by the board no later than January 31st of the following year.

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-47-201, 37-47-302, ~~37-47-303,~~ 37-47-304, 37-47-306, 37-47-307, ~~37-47-312,~~ MCA

REASON: The Board has determined there is reasonable necessity to amend this rule to clarify that only outfitters

have an annually renewable license. Guides and professional guides do not obtain renewable licensure and must apply new each year. This annual application requirement is not a change in the licensure process for guides and professional guides, but was never before specifically delineated in Board rule.

The Board is amending this rule to clarify that the licensee's current insurance certificate, when submitted to the Board at renewal, must show the licensee as a named insured, to coincide with the proposed amendments to ARM 24.171.507.

The Board has determined it is reasonable and necessary to address licensee confusion and amend this rule to clarify that the Board will accept as timely client logs and statistical level sheets reflecting late hunt services and submitted after the renewal date. The amended rule also provides a deadline for submission of the late hunt documents. Further, the Board is amending the rule to require submission of a current and valid first aid certification at licensure renewal. Currently, the renewal applicant must only submit a signed statement that the applicant's training is current and that the applicant is able to produce a current first aid card at the Board's request. The amendment will streamline the process by requiring the card up front at renewal and will serve to better protect the health and safety of the clients and the public in general. The implementation cites are being amended to accurately reflect all statutes implemented through the rule and to delete a reference to a repealed statute.

~~8.39.709 24.171.2301 STANDARDS FOR OUTFITTERS, GUIDES AND PROFESSIONAL GUIDES — UNPROFESSIONAL CONDUCT AND MISCONDUCT~~ (1) through (1)(f) remain the same.

(g) ~~specify in writing, when offering services to a nonresident hunting client, shall specify, in writing, the monetary consequences with respect to the prospective client's deposit, of the refund policy for failure by the prospective client to draw a license required to participate in the service offered;~~

(h) remains the same.

(i) ~~be responsible for making all agreements with clients concerning monetary consideration or services offered set all terms and conditions with clients;~~

(j) personally collect, or designate an agent (by written notice on a form provided by the board) to collect, all fees from clients. The outfitter is solely responsible for complying with ~~his or her~~ the outfitter's deposit and deposit refund policy;

(k) through (m) remain the same.

(n) not employ or retain a ~~new, first-time licensed guide or professional~~ an emergency guide after the ~~90th~~ 30th day following the date of the emergency guide's ~~or professional guide's~~ application for licensure without first

confirming that the emergency guide ~~or professional~~ guide has current basic first aid certification;

(o) not employ or retain a ~~previously licensed~~ guide or professional guide without first confirming that the guide or professional guide has current basic first aid certification; or

(p) ~~properly endorse an application for a guide or professional guide license in accordance with the laws and rules of the board not exceed the licensee's NCHU.~~

(2) A guide and professional guide shall:

(a) not advertise outfitting services, ~~unless the guide or professional guide owns an outfitting business. In cases where the guide or professional guide owns the outfitting business, he or she must identify the endorsing and supervising outfitter in any advertisement for the business;~~

(b) through (d) remain the same.

(3) All licensees shall:

(a) ~~make every effort to operate~~ provide services with respect for the rights of others, private and public property, and provide for the health, safety and well-being of their clients, employees and the general public;

(b) through (l) remain the same.

(m) not have hunting or fishing privileges suspended, revoked, placed on probation or voluntarily surrendered in the state of Montana or any other jurisdiction; ~~or~~

(n) not act beyond the scope of activities for which the individual is licensed-;

(o) clearly designate the name, address, telephone number, and license number of the outfitter, when advertising outfitter and guide services. In cases where a guide owns the outfitting business, the guide must identify the endorsing and supervising outfitter in any advertisement for the business;

(p) not offer for use by an unlicensed individual any watercraft identification identifying another licensee as the occupant of the watercraft;

(q) not intentionally misrepresent board laws or rules;

(r) not fail to respond to board inquiries and requests;

or

(s) not remit a "non-sufficient fund check" or a check on a closed account for board fees or fines.

AUTH: 37-1-319, 37-47-201, 37-47-341, MCA

IMP: 37-1-312, 37-47-341, MCA

REASON: As part of the Board's ongoing rule review, the Board determined it is reasonable and necessary to make several language and organizational amendments to this rule for ease of the reader's use and to more clearly identify the actions considered by the Board as unprofessional conduct and misconduct. In response to licensee inquiries, the Board is amending the rule to clarify that all terms and conditions of client services must be set by the licensed outfitter and not by a guide, and that the licensed outfitter is responsible for adhering to their deposit and refund policies.

The Board is amending subsection (1)(n) of the rule to coincide with requirements in New Rule II and ARM 24.171.802 regarding emergency guide licensure.

If an application for guide licensure is not properly endorsed by an outfitter, the guide will not receive a license. The Board determined it is reasonably necessary to remove the potential for disciplinary action against an outfitter for not properly endorsing a guide application, as the true penalty in such a case is that the guide will not obtain licensure and the outfitter cannot provide the guide's service to clients.

A licensed outfitter may not by law exceed their NCHU other than within the exception provided for at 37-47-316, MCA. This amendment incorporates the violation of the NCHU into Board rule as unprofessional conduct or misconduct and enables the Board to take disciplinary action against licensed outfitters who exceed their NCHU. The Board is amending the rule to make it very clear that a guide cannot advertise for outfitting services, except as allowed in subsection (3)(o) of this rule. Improper use of watercraft identification is being moved from ARM 24.171.806 to this rule to maintain all unprofessional conduct or misconduct rules in one location within the Board rules. Misrepresentation of Board laws and rules was not previously identified as unprofessional conduct or misconduct, however the Board determined that a licensee that intentionally provides false information should be subject to disciplinary action by the Board. Licensee failure to respond to Board inquiries and requests creates an additional workload for Board staff, and creates a hardship for the Board when additional information is needed in order to make informed decisions. It is reasonable to amend the rule to add as unprofessional conduct or misconduct a licensee's issuance of a bad check to the Board for fees or fines to authorize the Board to impose disciplinary action in such a case.

5. The proposed new rules provide as follows:

NEW RULE I GUIDE OR PROFESSIONAL GUIDE LICENSE (1) An applicant may apply for a guide or professional guide license on forms provided by the board, and accompanied by the required fee. The application must include a signature of the endorsing outfitter confirming that, to the knowledge of the outfitter, the guide or professional guide meets all the qualifications of a guide or professional guide.

(2) An applicant must submit proof of current basic first aid certification with the application.

(3) Except as provided below, when issued, the license shall be mailed to the endorsing outfitter retaining or employing the guide or professional guide. Thereafter, each additional outfitter who uses the services of the guide during the license year shall sign the guide's license, and,

following completion of the guide's service on behalf of the outfitter, shall specify dates on which the guide or professional guide provided service for the outfitter.

(4) An applicant for a guide or professional guide license who delivers a completed application and application fee to the board office will receive the license at that time, providing the endorsing outfitter has furnished the board office with written notice authorizing release of that guide's license to the guide.

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-47-101, 37-47-201, 37-47-301, 37-47-303, 37-47-307, 37-47-308, MCA

REASON: The Board has determined it is reasonably necessary to separate New Rules I and II from existing rule ARM 8.39.514 to make a clear and understandable distinction between the requirements for emergency guide license and the regular guide license. ARM 8.39.514 is proposed to be repealed. The separation of the regular and emergency guide license rules will create a more user-friendly rule format and will allow for improved customer service. In addition, the Board is putting the procedure for the immediate release of a guide's license in New Rule I. The procedure is currently and has been in place as the Board's procedure, but had not been specifically delineated before in rule.

NEW RULE II EMERGENCY GUIDE LICENSE (1) An outfitter may employ a guide for 10 days by using an emergency guide license on an application form provided by the board. The completed application form must be submitted to the board within that 10-day period.

(a) The outfitter must certify on the form that the guide is competent to provide guiding services in the physical location in which the guide will operate and for the specific activities in which the guide will engage.

(b) One emergency guide form will be provided to each outfitter annually at the time of renewal. When an outfitter submits an emergency guide license application in accordance with this rule, a blank form will be sent to the outfitter for use during the remainder of the license year. An outfitter may not submit for approval more than five emergency guide license application forms in any one license year, unless under state or federal emergency the board increases the allowable number of emergency guide licenses. An outfitter is prohibited from sharing emergency guide license applications with another outfitter.

(c) If an emergency guide wishes to have a regular guide license, a complete application must be received in the board office within 10 days from the first day the emergency guide was used. In this instance, the emergency guide license will remain in effect until the guide receives a regular guide license and allows the guide to perform services during the interim period.

(d) The endorsing outfitter shall designate the name of the emergency guide on the outfitter's log along with the clients guided and the dates during which the emergency guide was employed.

(2) An emergency guide license applicant wishing to obtain a regular license must submit proof of current basic first aid certification no later than 30 days from the date of application.

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-47-201, 37-47-301, 37-47-303, 37-47-307, MCA

REASON: The Board has determined that there is a reasonable necessity to separate New Rules I and II from existing rule ARM 8.39.514 to make a clear and understandable distinction between the requirements for emergency guide license and the regular guide license. ARM 8.39.514 is proposed to be repealed. The term "temporary" is being amended to "emergency" guide license to better reflect the situations and circumstances under which outfitters use emergency guides. The Board is amending the rule to provide outfitters the option of using up to five emergency guides during a license year. In reviewing the Board rules, the Board determined that the current 90-day exemption potentially allows an emergency guide to operate for an entire fishing and hunting season without being qualified to administer first aid. The amendment to a 30-day exemption would address this concern and serve to better protect the health and safety of the clients.

NEW RULE III TRANSFER OF RIVER-USE DAYS (1) When a fishing outfitter transfers all river-use days that have been allocated to that fishing outfitter as part of the complete sale or transfer of a business, and if requested by either the outfitter-owner transferring the river-use days or the prospective new owner receiving them, board staff shall determine the outfitter-owner's record of river-use days to ensure accuracy of the allocation of river-use days to be transferred.

(2) When board staff conducts such an audit, all expenses for the audit shall be billed to the outfitter who is transferring the river-use days. The fee for the audit has been established by the board and set forth in ARM 24.171.401.

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-47-201, 37-47-310, MCA

REASON: The 2003 Montana Legislature enacted Section 1, Chapter 91, Laws of 2003 (House Bill 411), an act providing for the transfer of river-use days to the new owner of a fishing outfitter business. The bill was signed by the Governor and became effective on March 24, 2003, and is codified at 37-47-310, MCA.

The Board determined it is reasonable and necessary to adopt New Rule III to clarify the audit procedure the Board will use in determining the transferable river-use days as specified in the 2003 legislation. The New Rule further implements the legislation by clarifying that when an audit is requested, a fee will be billed to the transferring outfitter.

NEW RULE IV ACTIVE DUTY STATUS FOR LICENSEES IN THE MILITARY

(1) The board recognizes that the nation relies on members of the national guard and the reserve branches of the armed forces for the nation's security, and that the members of the national guard and reserve forces are subject to call to active duty on short notice. In consideration of that service to the nation, the board finds that it is appropriate to defer the licensing renewal obligations of such individuals called to active duty status, provided that the individual is not required by the armed forces to maintain current professional or occupational licensing as a condition of serving in the armed forces.

(2) An activated reservist, as defined in 37-1-138, MCA, upon submission of appropriate evidence, is entitled to the following privileges:

(a) The activated reservist is not required to timely pay a renewal fee for license renewal that comes due while the person is in active duty status. The renewal fee is payable within six months following the activated reservist's discharge from active duty status. Unless otherwise relieved from the renewal application requirements, the activated reservist must timely apply for license renewal.

(b) If the activated reservist provides proof to the board of the reservist's active duty status before the reservist's license expires, the reservist is relieved from having to timely submit a renewal application and any related documents or information during the period while the reservist is on active duty status. The reservist has six months following discharge from active duty status to submit to the board such renewal applications and any related documents or information that came due during the period of the reservist's active duty status.

(3) In order to gain the benefits of this rule, the activated reservist must provide the board with proof of active duty status, including the date upon which the reservist was called to active duty status. The board may require the activated reservist to periodically provide information to the board regarding the reservist's active duty status or the date of the reservist's discharge from active duty status.

(4) A license that has not lapsed continues in the same status as existed the day before the reservist was called to active duty status, and remains in that status until the reservist renews the license or six months have elapsed from the reservist's discharge from active duty status, whichever comes first.

AUTH: 37-1-131, 37-1-138, 37-47-201, MCA
IMP: 37-1-138, 37-47-307, MCA

REASON: The 2003 Montana Legislature enacted Section 62, Chapter 271, Laws of 2003 (House Bill 285), an act revising laws related to military status and prohibiting certain adverse actions related to the professional licensure of a reserve member of the United States armed forces who is activated to federal military duty for an extended length of time. The bill was signed by the Governor and became effective April 9, 2003, applying retroactively to occurrences after December 31, 2002, and is codified at 37-1-138, MCA.

There is reasonable necessity to adopt New Rule IV in order to further implement the 2003 legislation and to address concerns of those licensees who are members of the National Guard or reserve forces of the U.S. armed services and have been called to active duty status. The New Rule is proposed to minimize licensure renewal concerns that might occur when a licensee is suddenly called to active duty. The proposed language treats renewal obligations in a manner consistent with the Soldiers' and Sailors' Civil Relief Act of 1940, as amended.

6. The Board of Outfitters proposes to repeal the following rules:

8.39.513 SALE AND PURCHASE OF AN OUTFITTING OPERATION
found at ARM page 8-1118.5.

AUTH: 37-47-201, MCA
IMP: 37-47-201, MCA

REASON: It is reasonable and necessary to repeal this rule as the Board has determined that the Board lacks jurisdiction to review, approve or deny the sale of outfitting businesses. The portion of the rule addressing waiver of up to 50 days of experience for applicants buying an existing outfitter operation have been retained and incorporated into ARM 24.171.502.

8.39.514 LICENSURE - GUIDE OR PROFESSIONAL GUIDE LICENSE
found at ARM page 8-1118.6.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-47-201, 37-47-301, 37-47-307, MCA

REASON: It is reasonable and necessary to repeal this rule as the Board has separated the provisions on emergency guide licenses and regular guide licenses and set them forth in New Rules I and II. The Board is repealing this rule as redundant and unnecessary.

8.39.801 PURPOSE found at ARM page 8-1123.

AUTH: 37-47-201, MCA
IMP: 37-47-201, 37-47-315, MCA

8.39.802 MORATORIUM found at ARM page 8-1123.

AUTH: 37-47-201, MCA
IMP: 37-47-201, 37-47-315, MCA

8.39.803 APPLICANT CATEGORIES - CONDITIONS AND PRIORITIES found at ARM page 8-1124.

AUTH: 37-47-201, MCA
IMP: 37-47-201, 37-47-315, MCA

REASON: The Board has determined that there is reasonable necessity to repeal these rules in order to eliminate redundancy, combine similar rules and remove rules that no longer apply or have become outdated.

7. The remainder of the rules not proposed to be amended and transferred, or repealed at this time, will be renumbered and transferred when final action is taken on the proposed rule amendments, adoptions, and repeals.

8. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted by mail to: Wayne Johnston, Board of Outfitters, Department of Labor and Industry, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsout@mt.gov and must be received no later than 5:00 p.m., September 28, 2005.

9. An electronic copy of this Notice of Public Hearing is available through the Department and Board's site on the World Wide Web at <http://www.outfitter.mt.gov>, in the Rules Notices section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

10. The Board of Outfitters maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request that

includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Outfitters administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to dlibsout@mt.gov or may be made by completing a request form at any rules hearing held by the agency.

11. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

12. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

BOARD OF OUTFITTERS
MEL MONTGOMERY, CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State August 15, 2005.